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01 OCT 2007

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In re Application of
Schiele
Application No. 10/550,166
PCT No.: PCT/EP04/02971
Int. Filing Date: 22 March 2004
Priority Date: 21 March 2003
Atty. Docket No.: KW-17PCT
For: Coating Device For Water-Based Lacquer
That Is Dried By Near-Infrared Light

DECISION

This is in response to the renewed "Request For Withdrawal Of Holding Of Abandonment" filed on 02 July 2007.

DISCUSSION

In a Decision mailed on 25 May 2007, applicant's 21 March 2007 request for withdrawal of the holding of abandonment (and withdrawal of the requirement to furnish an English translation) was dismissed without prejudice because

In view of applicants' arguments, an additional review of the contents of the IFW has been conducted but, as was the case previously, no copy of a 6-claim claim set appears to have been present in the application file prior to receipt of the instant (21 March 2007) correspondence. Although applicants suggest that a translation of the originally-filed claims was submitted along with the correspondence filed on 20 September 2005, no additional evidence (e.g., a properly itemized and date-stamped return postcard receipt) has been adduced to show that such a translation was in fact received. In the absence of such evidence, it would not be appropriate to conclude that the translation of the 6 original claims was actually timely filed in the USPTO and, as such, this international application remains **ABANDONED** with respect to the national stage in the United States.

Petitioner now presents a "Declaration" of Matthew Lingley which states in part

that I have prepared the National phase of the above-identified International application for filing;

that the papers included a translation of the International application with six claims...

Petitioner also provides a copy of a return postcard receipt which is stamped as "Rec'd PCT/PTO 20 SEP 2005." Inspection of the postcard receipt reveals that it itemizes *inter alia* an "Int. Application w/English Translation." MPEP 503 explains in part that

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on

the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as prima facie evidence of receipt of those items.

In the instant case, the official record of the USPTO (i.e., the IFW) indicates that the translated claim set filed on 20 September 2005 consisted of five claims. The postcard evidence proffered to show otherwise is not sufficient to overcome the contrary indication on the official record because said postcard does not specifically itemize the number of claims included in the translation. As such, it does not clearly show that the correspondence filed on 20 September 2005 included a translation including a different number of claims than the 5 shown on the official record. As such, it would be inappropriate on the basis of the present record to conclude that the English translation filed on 20 September 2005 included 6 claims.

CONCLUSION

The petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision (extendable under 37 CFR 1.136(a)).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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